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| 27195 7590 09/16/2008<br>AMIN, TUROCY & CALVIN, LLP<br>24TH FLOOR, NATIONAL CITY CENTER<br>1900 EAST NINTH STREET<br>CLEVELAND, OH 44114 |             |                      |                          |                  |
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/713,962  
Filing Date: November 15, 2000  
Appellant(s): RAPPAPORT ET AL.

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Himanshu S. Amin  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed June 20, 2008 appealing from the Office  
action mailed on 03/03/08

**(1) Real Party in Interest**

A statement identifying the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

|           |                 |         |
|-----------|-----------------|---------|
| 5561446   | MONTCLICK       | 10-1996 |
| 6199099   | GERSHMAN ET AL. | 3-2001  |
| 5,772,585 | LAVIN ET AL.    | 6-1998  |

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-6, 8-10, 12-13 and 15-23 are rejected under 35 U.S.C.103. This rejection is set forth in prior Office Action. This rejection is set forth below as it appears on the previous Office Action.

Claims 1-6, 8-10, 12-13 and 15-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montlick (5,561,446) in view of Lavin et al (5,772,585).

As per claim 1, Montlick discloses a method of communicating healthcare information, the method comprising: displaying a set of codes each corresponding to a respective healthcare data, "the healthcare data including a plurality of medical diagnoses each of which corresponds to at least one code (See Montlick, Col.5, lines 49-67); storing the set of codes (See Montlick, Col.10, lines 6-30); detecting selection by

a user of a subset of the displayed codes that corresponds to a medical diagnosis relevant to a patient (See Montlick, Col.5, lines 49-67 to Col.6, line 7).

Montlick does not explicitly disclose that the method having the medical diagnoses in a memory a portable terminal; and wirelessly transmitting the selected subset of the displayed codes from the portable terminal to a server system via a first network capable of providing communication between the portable terminal and the server system, wherein said wirelessly transmitting causes the healthcare data corresponding to the selected subset of the displayed codes to be provided to a medical patient via a second network capable of providing communication between the server system and a patient accessible device.

However, these features are known in the art, as evidenced by Lavin. In particular, Lavin suggests that the method having the medical diagnoses in a memory a portable terminal (See Lavin, Col.4, lines 33-67); and wirelessly transmitting the selected subset of the displayed codes from the portable terminal to a server system via a first network capable of providing communication between the portable terminal and the server system (See Lavin, Col.4, lines 33-67), wherein said wirelessly transmitting causes the healthcare data corresponding to the selected subset of the displayed codes to be provided to a medical patient via a second network capable of providing communication between the server system and a patient accessible device (See Fig.1; Col.13, lines 29-59).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Lavin within the system of Montlick with the

motivation of providing a method for concurrently recording examination and diagnoses notes in a database during patient examination (See Lavin, Col.1, lines 58-62).

As per claim 2, Lavin discloses the method wherein the portable terminal is a cellular telephone having on board memory (Lavin, Col.4, lines 43-59; Col.5, lines 19-27), the set of codes being one of an ICD-9CM diagnosis code, an ICD-10CM diagnosis code (See Lavin, Col.13, lines 29-44).

The motivation for combining the respective teachings of Montlick and Lavin are as discussed above in the rejection of claim 1, and incorporated herein.

As per claim 3, Montlick discloses the method wherein the code is transmitted via a first, wireless network (See Montlick, Col.5, lines 10-20).

As per claim 4, Montlick discloses the method of claim 3 wherein the first, wireless network is one of a CDMA network, a GSM network, a TDMA network and a CPDP network (The Examiner understands that Montlick teaches a spread-spectrum wireless network which has the same performance and usage in a digital cellular phone. In other words, the spread-spectrum is equivalent to the CDMA network that Applicant's is referring to. See Col.5, lines 10-20).

As per claim 5, Montlick discloses the method wherein the recipient is a gateway that connects the first, wireless network to a second network (See Montlick, Col.3, lines 14-16).

As per claim 6, Montlick discloses the method wherein the second network comprises the Internet/World Wide Web (The Examiner interprets central computer 10 coupled to a modem 11 for communicating with other networks and/or for the transmission and reception of FAX information is a form of Internet/World Wide Web See Montlick, Col.5, lines 5-20).

As per claim 8, Montlick discloses the method wherein the healthcare data corresponding to the transmitted code is associated with corresponding healthcare information in a database, and wherein said corresponding healthcare information is transmitted to an end user via the second network (See Montlick, Col.3, lines 14-67).

As per claim 9, Montlick discloses apparatus for communicating healthcare information, the apparatus comprising:

- a portable terminal to communicate wirelessly with a server system via a first, wireless network (See Montlick, Col.3, lines 10-36);

- a memory, associated with the portable terminal, to store a set of codes and medical diagnoses, each code corresponding to a medical diagnosis relating to healthcare data (See Montlick, Col.10, lines 6-30);

a display to display the set of codes and the medical diagnoses (See Montlick, Fig.2; Col.5, lines 54-61);

a selector operable by a user to select desired codes of the set of codes for transmission to the server system, the desired codes identifying a medical condition (See Montlick, Col.9, lines 37-47).

Montlick does not explicitly disclose that the apparatus wherein transmission of the desired codes causes corresponding healthcare data to be provided to a medical patient via a second network, wherein the second network is adapted to provide communication between the server system and a patient accessible device.

However, this feature is known in the art, as evidenced by Lavin. In particular, Lavin suggests that the apparatus wherein transmission of the desired codes causes corresponding healthcare data to be provided to a medical patient via a second network, wherein the second network is adapted to provide communication between the server system and a patient accessible device (See Fig.1; Col.13, lines 29-59).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Lavin within the system of Montlick with the motivation of providing a method for concurrently recording examination and diagnoses notes in a database during patient examination (See Lavin, Col.1, lines 58-62).

As per claim 12, Montlick discloses a system for communicating healthcare information, the system comprising:



at least one portable terminal to communicate wirelessly with a gateway via a first, wireless network, the portable terminal including a memory associated therewith for storing a set of codes, and medical diagnoses, each code corresponding to respective healthcare data including medical diagnoses (See Montlick, Col.10, lines 6-30);

a display for displaying the set of codes and the medical diagnoses, each code identifying a medical diagnosis (See Montlick, Fig.2; Col.5, lines 54-61); and

a first server to communicate with the gateway device and to communicate healthcare information to a second user via a second network (See Montlick, Col.3, lines 14-67).

Montlick does not explicitly disclose a selector operable by a first user to select a set of the codes in connection with formulating a comprehensive medical diagnosis for transmission to the recipient; wherein the healthcare information is related to the corresponding set of codes; wherein the gateway device is capable of facilitating communication between said at least one portable terminal and the first server.

However, this feature is known in the art, as evidenced by Lavin. In particular, Lavin suggests a selector operable by a first user to select a set of the codes in connection with formulating a comprehensive medical diagnosis for transmission to the recipient (See Lavin, Col.13, lines 29-59); wherein the healthcare information is related to the corresponding set of codes (See Lavin, Col.13, lines 29-59); wherein the gateway device is capable of facilitating communication between said at least one portable terminal and the first server (See Lavin, Col.4, lines 43-59).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Lavin within the system of Montlick with the motivation of providing a method for concurrently recording examination and diagnoses notes in a database during patient examination (See Lavin, Col.1, lines 58-62).

As per claim 17, Montlick discloses the system further comprising a second, application server with an associated database storing healthcare information associated with the codes, the gateway being arranged to communicate with the first server via the application server, thereby to retrieve healthcare information from the database corresponding to receive codes and to transmit the healthcare information to an end user via the second network (See Montlick, Col.3, lines 14-67).

As per claim 18, Montlick discloses a system for communicating healthcare information, the system comprising:

a gateway device to communicate wirelessly with at least one portable terminal via a first, wireless network and with a first server (See Montlick, Col.3, lines 13-31), to receive codes from said at least one portable terminal selected from a set of codes each corresponding to respective healthcare data, and to transmit healthcare information corresponding to the received codes to the first server (See Montlick, Col.5, lines 21-67).

Montlick does not explicitly disclose a first server to communicate with the gateway device, to receive the healthcare information from the gateway device and to

communicate the healthcare information to a patient on which diagnosis was performed via a second network; wherein the second network is capable of providing communication between the first server and a patient accessible device.

However, these features are known in the art, as evidenced by Lavin. In particular, Lavin suggests that a first server to communicate with the gateway device, to receive the healthcare information from the gateway device and to communicate the healthcare information to a patient on which diagnosis was performed via a second network (See Lavin, Col.13, lines 1-41); wherein the second network is capable of providing communication between the first server and a patient accessible device (See Lavin, Col.15, lines 1-41).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Lavin within the system of Montlick with the motivation of providing a method for concurrently recording examination and diagnoses notes in a database during patient examination (See Lavin, Col.1, lines 58-62).

As per claim 21, Montlick discloses a machine-readable medium comprising instructions which, when executed by a machine, cause the machine to perform operations comprising: generating a display of a set of codes and medical diagnoses on a portable terminal, each code corresponding to respective healthcare data, the healthcare data including the medical diagnoses each of which corresponds to at least one code (See Montlick, Col.5, lines 10-20).

Montlick does not explicitly disclose detecting selection of a subset of the codes that correspond to a comprehensive medical diagnoses of patient; and wirelessly transmitting the selected subset of codes to a server system via a first network capable of providing communication between the portable terminal and a server system, wherein said wirelessly transmitting the subset of codes causes at least some of the medical diagnoses to be provided to the patient via a second network capable of providing communication between the server system and a patient accessible device.

However, these features are known in the art, as evidenced Lavin. In particular, Lavin suggests detecting selection of a subset of the codes that correspond to a comprehensive medical diagnoses of patient (See Lavin, Col.13, lines 29-59); and wirelessly transmitting the selected subset of codes to a server system via a first network capable of providing communication between the portable terminal and a server system, wherein said wirelessly transmitting the subset of codes causes at least some of the medical diagnoses to be provided to the patient via a second network capable of providing communication between the server system and a patient accessible device (See Lavin, Col.13, lines 29-59).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Lavin within the system of Montlick with the motivation of providing a method for concurrently recording examination and diagnoses notes in a database during patient examination (See Lavin, Col.1, lines 58-62).

As per claim 22, Montlick discloses an apparatus, comprising: a memory that stores a codes that respectively correspond to medical diagnosis (See Montlick, Col.10, lines 6-30); a processor that provides for displaying the codes on a display (See Montlick, Fig.5; Col.10, lines 38-63); wherein the apparatus wirelessly transmits the selected subset of codes to a network so that the patient can access the comprehensive medical diagnosis form a remote location (See Montlick, Col.9, lines 38-67).

Montlick does not explicitly disclose that a selector that receives selections from a doctor of a subset of the codes in connection with formulating a comprehensive medical diagnosis in connection with a patient, wherein the apparatus wirelessly transmits the selected subset of codes to a network so that the patient can access the comprehensive medical diagnosis form a remote location.

However, this feature is known in the art, as evidenced by Lavin. In particular, Lavin suggests that a selector that receives selections from a doctor of a subset of the codes in connection with formulating a comprehensive medical diagnosis in connection with a patient (See Lavin, Col.13, lines 29-59).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Lavin within the system of Montlick with the motivation of providing a method for concurrently recording examination and diagnoses notes in a database during patient examination (See Lavin, Col.1, lines 58-62).

As per claim 23, Montlick discloses a computer-implemented method that facilitates conveying medical information, comprising: wirelessly receiving a set of codes, selected by a doctor in connection with formulating a medical diagnosis of a patient (See Montlick, Col.9, lines 38-67); making the medical diagnosis report available to a third party over the Internet (The Examiner understands prescription which can be immediately transmitted to the pharmacy through the wireless network 13, or through the modem 11 (Fig.1) either as a computer file or as a FAX as a form of a transmission to a third party over the Internet See Montlick Col.10, lines 1-5).

Montlick does not explicitly disclose analyzing the set of codes, and generating a medical diagnosis report.

However, this feature is known in the art, as evidenced by Lavin. In particular, Lavin suggests analyzing the set of codes, and generating a medical diagnosis report (See Lavin, Col.13, lines 29-59).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Lavin within the system of Montlick with the motivation of providing a method for concurrently recording examination and diagnoses notes in a database during patient examination (See Lavin, Col.1, lines 58-62).

Claims 10, 13, 15-16, and 19-20 recite the underlying process steps of the elements of claims 2, 4, 6, 11 and 17 have been shown to be either disclosed by or obvious in view of the collective teaching of Montlick, Lavin, it is readily apparent that

the method disclosed by the applied prior art performs the recited underlying functions. As such, the limitations recited in claims 10, 13, 15-16 and 19-20 are rejected for the same reasons given above for claims 2, 4, 6, 11, and 17, and incorporated herein.

5. Claims 7, 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montlick (5,561,446) in view of Lavin et al (5,772,585) as applied to claims 1-6, 8-10, 12-13 and 15-23 above and further in view of Gershman et al (6,199,099).

As per claims 7, 11 and 14, Montlick and Lavin disclose the method wherein the code (See Montlick, Col.5, lines 10-20).

Montlick does not explicitly disclose that the method is transmitted using Wireless Mark-up Language (WML).

However, this feature is known in the art, as evidenced by Gershman. In particular, Gershman teaches a Wireless Mark-up Language (WML) which can also be a Wireless Application Protocol in order to view on handheld devices with small screens, such as cell phones (See Gershman, Col.1, lines 45-60).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature Gershman within the collective teachings of Montlick and Lavin with the motivation of providing WAP, a standard way to put data capability into wireless phones, and allowed carriers to do more over-the-air management (See Gershman, Col.1, lines 52-56).

**(10) Response to Argument**

In the Appeal Brief filed on 06/20/08, Appellant makes the following arguments:

- (i) Neither Montlick, Lavin and Gerhsman alone or in combination teach or suggest all features of the subject matter.
- (ii) Lavin does not teach "storing the set of codes and the medical diagnoses in a memory of a portable terminal".
- (iii) Lavin does not teach "wireless transmitting causes the healthcare data corresponding to the selected subset of the displayed codes to be provided to a medical patient via a second network capable of providing communication between the server system and a patient accessible device, or wherein the recipient is a gateway that connects the first, wireless network to a second network".

Examiner will address Appellant's argument and related points in sequence as they appear in the Brief.

With respect to Appellant first argument, the Examiner respectfully submitted that obviousness is determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See *In re Oetiker*, 977F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir.1992); *In re Hedges*, 783F.2d 1038, 1039, 228 USPQ 685,686 (Fed.Cir.1992; *In re Piasecki*, 745F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir.1984);



and *In re Rinehart*, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Using this standard, the Examiner respectfully submitted that he has at least presented evidence of corresponding claim elements in the prior art and has expressly articulated the combinations and the motivations for combinations that fairly suggest Appellant's claimed invention. Note, for example, in rejection of claim 1, Examiner had stated the following:

As per claim 1, Montlick discloses a method of communicating healthcare information, the method comprising: displaying a set of codes each corresponding to a respective healthcare data, "the healthcare data including a plurality of medical diagnoses each of which corresponds to at least one code (See Montlick, Col.5, lines 49-67); storing the set of codes (See Montlick, Col.10, lines 6-30); detecting selection by a user of a subset of the displayed codes that corresponds to a medical diagnosis relevant to a patient (See Montlick, Col.5, lines 49-67 to Col.6, line 7).

Montlick does not explicitly disclose that the method having the medical diagnoses in a memory a portable terminal; and wirelessly transmitting the selected subset of the displayed codes from the portable terminal to a server system via a first network capable of providing communication between the portable terminal and the server system, wherein said wirelessly transmitting causes the healthcare data corresponding to the selected subset of the displayed codes to be provided to a medical patient via a second network capable of providing communication between the server system and a patient accessible device.

However, these features are known in the art, as evidenced by Lavin. In particular, Lavin suggests that the method having the medical diagnoses in a memory a portable terminal (See Lavin, Col.4, lines 33-67); and wirelessly transmitting the selected subset of the displayed codes from the portable terminal to a server system via a first network capable of providing communication between the portable terminal and the server system (See Lavin, Col.4, lines 33-67), wherein said wirelessly transmitting causes the healthcare data corresponding to the selected subset of the displayed codes to be provided to a medical patient via a second network capable of providing communication between the server system and a patient accessible device (See Fig.1; Col.13, lines 29-59).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Lavin within the system of Montlick with the motivation of providing a method for concurrently recording examination and diagnoses notes in a database during patient examination (See Lavin, Col.1, lines 58-62).

As such, it is respectfully submitted that an explanation based on logic and sound scientific reasoning of one of ordinary skilled in the art at the time of the invention that support a holding of obviousness has been adequately provided by the motivations and reasons indicated by the Examiner in the previous Office Actions, incorporated herein, *Ex parte Levengood*, 28 USPQ2d 1300 (Bd.Pat. App. & Inter., 4/22/93).

With respect to Appellant second argument, it is respectfully submitted that the Examiner had relied upon the clear teaching of Montlick's reference See Col.5, lines 36-

67 to Col.6, line 7 which correspond to the claimed feature. As such, the Examiner respectfully submitted that such terms were given their broadest reasonable interpretations during examination, and since the applied reference clearly discloses the claims limitations, when given their broadest reasonable interpretations, it is respectfully submitted that the Examiner's reliance on Montlick is indeed proper. Therefore, Appellant's argument is not persuasive and the rejection is hereby sustained.

With respect to Appellant third argument, it is respectfully submitted that the Examiner had relied upon the clear teaching of Montlick's reference See Col.5, lines 1-67 to Col.6, line 7 which correspond to the claimed feature. As such, the Examiner respectfully submitted that such terms were given their broadest reasonable interpretations during examination, and since the applied reference clearly discloses the claims limitations, when given their broadest reasonable interpretations, it is respectfully submitted that the Examiner's reliance on Montlick is indeed proper. Therefore, Appellant's argument is not persuasive and the rejection is hereby sustained.

Thus, the teachings of Montlick , Lavin and Gershman when considered with the knowledge that is generally available to one of ordinary skill in the art make obvious the limitations that Appellant disputes.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejection should be sustained.

Respectfully submitted,

/Vanel Frenel/

Patent Examiner

Art unit 3687

August 30, 2008

CONFEREES:

/Matthew S Gart/

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